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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

APR 13 10 56 AM '99

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4838

DATE COMPLAINT FILED: October 26, 1998

DATE OF NOTIFICATION: October 30, 1998

DATE ACTIVATED: February 25, 1999

STAFF MEMBERS: Donald E. Campbell
Thomas J. Andersen

COMPLAINANT: Bernard Gomberg

RESPONDENTS: Paul J. Feiner
Citizens for Paul Feiner and Philip A. Feiner, as treasurer¹

RELEVANT STATUTE: 2 U.S.C. § 441d(a)
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Bernard Gomberg on October 26, 1998. The complaint alleges that Paul J. Feiner and his principal campaign committee, Citizens for Paul Feiner and Philip A. Feiner, as treasurer ("Committee"), failed to include disclaimer notices on public political advertising during the 1998 election for U.S. Representative in New York's 20th Congressional District.²

¹ During the activities at issue, Citizens for Paul Feiner was known as Paul Feiner for Congress. An amended Statement of Organization reflecting this name change was filed on January 25, 1999.

² Mr. Feiner lost the election to incumbent Benjamin A. Gilman, 58% to 39%.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate, or expenditures to solicit any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, must include a disclaimer. 2 U.S.C. § 441d(a). The Commission's regulations further specify that disclaimers are required on "posters" and "yard signs." 11 C.F.R. § 110.11(a)(1). In Advisory Opinion 1995-9, the Commission stated that the use of a web site by a political committee "should be viewed as a form of general public political advertising under 11 C.F.R. § 110.11."

If the communication was paid for and authorized by a candidate, an authorized committee of a candidate or an agent thereof, the disclaimer shall clearly state that the communication was paid for by the authorized political committee. 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(a)(1)(i). According to 11 C.F.R. § 110.11(a)(1), the disclaimer shall be presented in a clear and conspicuous manner. The Act and regulations do not provide for "disclaimers by inference." *See, e.g., FEC v. National Conservative Political Action Committee*, No. 85-2898 (D.D.C. April 29, 1987) (unpublished opinion).

B. Complaint and Response

The complaint alleges that "[Paul] Feiner (or his agents) has violated federal law by failing to include disclaimer notices on public political advertising." The complaint first identifies an advertisement appearing in the October 1998 edition of the *Nyack (N.Y.) Villager*. The advertisement contains such statements as "Paul Feiner for Congress" and "Elect Paul Feiner

For Congress, 20th CD,” along with the campaign’s web site address, <www.feiner.org>.

Attachment 1 at 1. The advertisement does not state who paid for it. Second, the complaint alleges that numerous yard signs advocating the election of Paul Feiner were posted in the district, and includes a photograph of one of the signs. Attachment 1 at 2. The sign says “Paul Feiner – Congress – Time for a Change” without stating who paid for it. Finally, the complaint alleges that a web site expressly advocating the election of Paul Feiner and soliciting funds for his committee fails to include a disclaimer.³ Attached to the complaint are two web pages dated October 17, 1998, containing the phrase “Paul Feiner for Congress” in large type and suggesting to readers that if they “want to make a contribution, send a check to ‘Paul Feiner for Congress’” at a given address. Attachment 1 at 3-4. The pages do not state who paid for the web site.

In a response to the complaint, the candidate acknowledges that the disclaimer omissions alleged in the complaint occurred, describing them as “an unintentional oversight.” The candidate states that the failure to include disclaimers was “due to the fact that I have never run for Congress before and due to the fact that the ads and signs were ordered by campaign volunteers – rather than professionals.” The candidate adds that he has “already remedied [his] internet site to include any disclosure.” The candidate has attached to the response copies of his campaign literature: “As you will note . . . I included the disclaimer in all my campaign

³ This Office was unable to access the web site address provided in the complaint. However, the campaign web site listed in the advertisements, <www.feiner.org>, is still accessible and appears to include a proper disclaimer.

The complaint also alleges that the web site “fails to include a statement informing potential donors that ‘contributions are not deductible for federal income tax purposes.’” Complainant “requests that the Commission forward this violation of [26 U.S.C. § 6113] to the proper authorities at the Internal Revenue Service.” At the time this matter is closed, this Office intends to inform Complainant in the appropriate letter that such violations are not within the Commission’s jurisdiction, and that he may contact the IRS himself.

literature, stationary [sic] and fundraisers, as required by law." All of the items attached to the response state that they were paid for by the Committee.

C. Analysis

The three campaign items referred to in the complaint all appear to constitute public communications containing express advocacy or solicitations for contributions, and also appear to have been paid for and authorized by the Committee. Accordingly, pursuant to 2 U.S.C. § 441d(a)(1), the items required a disclaimer stating that they had been paid for by the Committee. The response acknowledges that the Committee failed to include disclaimers on these items. Therefore, this Office recommends that the Commission find reason to believe that Citizens for Paul Feiner and Philip A. Feiner, as treasurer, violated 2 U.S.C. § 441d(a). The available information does not indicate any personal involvement in the above-described activities on the part of the candidate. Therefore, this Office recommends that the Commission find no reason to believe that Paul J. Feiner violated any provision of the Act in this matter.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

This Office further recommends that the Commission enter into conciliation with the Committee prior to a finding of probable cause to believe.

1

this Office


recommends that the Commission approve the attached conciliation agreement.⁶ Attachment 4.

IV. RECOMMENDATIONS

1. Find reason to believe that Citizens for Paul Feiner and Philip A. Feiner, as treasurer, violated 2 U.S.C. § 441d(a), and enter into conciliation prior to a finding of probable cause to believe.
2. Find no reason to believe that Paul J. Feiner violated any provision of the Act or regulations in this matter.
3. Approve the attached Factual and Legal Analyses, conciliation agreement and the appropriate letters.

Lawrence M. Noble
General Counsel

4/12/99
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments:

1. Copies of items without disclaimers
2. Information from Committee disclosure reports
3. Factual and Legal Analyses
4. Conciliation agreement

⁶ On March 15, 1999, the Commission received a Statement of Candidacy from Paul J. Feiner for the same office in the 2000 election. The candidate named as his principal campaign committee Citizens for Paul Feiner and Philip A. Feiner, as treasurer.

Ask Dr. Diner



Nyack Hospital

180 N. Midland Avenue
Nyack, NY 10960

Thanks to Nyack Hospital
Foundation and Community
Outreach for their assistance.

Q: Dear Dr. Diner:
What is COPD?

A: COPD means Chronic Obstructive Pulmonary Disease and includes chronic bronchitis and emphysema. In COPD the bronchial tubes that carry air (oxygen) to the lungs become obstructed by mucous, infection and inflammation. In addition, the air sacs in the lungs may also be destroyed. Individuals with COPD usually have chronic cough and are short of breath, even with very little physical activity.

Intermittently, symptoms can become more intense with spasm of the bronchial tubes and increase in mucous secretions. In very severe advanced cases some patients may



become completely debilitated by this disease.

Patients with COPD are treated with medications that dilate the bronchial tubes, thereby allowing more air to be inhaled into the lungs. In more severe cases oxygen and certain steroid medications may also be necessary.

An overwhelming majority of cases of COPD are directly caused by cigarette smoking. Patients with COPD are, of course, strongly urged not to smoke. Cigar and pipe smoking do not increase the risk of COPD if the

smoke is not inhaled but they do increase the risk for other kinds of cancers.

Not smoking is the most effective way to prevent Chronic Obstructive Pulmonary Disease (COPD).

Martin K. Diner MD specializes in Behavioral and Preventive Medicine. In addition to his private practice he is Medical Director of Nyack Hospital's Care Center.

The Nyack Villager thanks Nyack Hospital Foundation and Community Outreach for their assistance. ★

PAUL FEINER DEMOCRAT FOR CONGRESS



Ben Gilman forgot to tell you

- ✓ he voted to repeal the ban on assault weapons.
- ✓ he voted a 32% cut in funds for the EPA, making it likely that polluters will go unpunished
- ✓ he cast the deciding vote against arts funding (1997)
- ✓ he voted to cut Head Start, school lunch & child nutrition programs

WE CAN DO BETTER!

www.feiner.org
(914) 472-4236

**ELECT PAUL FEINER
FOR CONGRESS 20TH CD**

Phone Numbers

VILLAGE SERVICES and GROUPS



AMBULANCE CORPS 911
TO REPORT A FIRE 911
POLICE (emergency only) 911
POLICE (non-emerg only) 359 3700
POISON CONTROL 1-800 • 336 6997
RPT CHILD ABUSE 1-800 + 342 3720
BATTERED WOMEN 634 3344
NYACK HOSP EMERGENCY 348 2345

■ Village Hall / Nyack 9 N Broadway
OFFICE OF VILLAGE CLERK 358 0548
MAYOR'S OFFICE 358 0229
OFFICE OF TREASURER 358 3561
BUILDING DEPT 358 4249
DEPT PUBLIC WORKS 358 3552
FIRE INSPECTOR 358 6245
JUSTICE COURT 358 4464
PARKING AUTHORITY 358 3851
WATER DEPT (non emerg) 358 0641
WATER PLANT EMERG 358 3734
HOUSING AUTH 15 Highvw 358 2476
SECTION 8E 358 2591

■ Village Hall / S. Nyack 282 S Bdwy
OFFICE OF VILLAGE CLERK 358 0287

■ Village Hall / U. Nyack N. Bdwy
OFFICE OF VILLAGE CLERK 358 0084

■ Village Hall / Grand View 118 River Rd
OFFICE OF VILLAGE CLERK 358 2919

Please notify The Nyack Villager if you spot any incorrect or obsolete numbers in this list

PUBLIC SCHOOLS INFO 353 7013
SUPERINTENDENT 353 7010
SENIOR HIGH 353 7100
MIDDLE SCHOOL 353 7200
LIBERTY ELEMENTARY 353 7240
UPPER NYACK ELEM 353 7260
VALLEY COTTAGE ELEM 353 7280

RCC NYACK LEARNING CNTR 358 9392
EMPIRE STATE COLLEGE 358 3990
NYACK COLLEGE 358 1710
LITERACY COOPERATIVE 358 5700
NYACK CENTER 358 2600
NYACK PUBLIC LIBRARY 358 3370
NYACK POST OFFICE 358 2225
HEAD START OF ROCKLAND 358 2234
NYACK SENIOR CENTER 353 1311
REACH OUT TO YOUTH (ROY) 358 2884
YMCA NYACK 358 0245

CHILDREN'S MUSEUM 358 2191
ELMWOOD PLAYHOUSE 353 1313
HELLEN HAYES BOX OFC 358 6333
HOPPER HOUSE ART CENTER 358 0774
MAIN STREET ARTS CENTER 358 7701
ROCKLAND CNTR FOR ARTS 358 0877

BOAT CLUB, NYACK 358 9724
BOAT CLUB, HOOK MTN 358 9874
COMMUNITY GARDEN 358 1734
FRIENDS OF THE NYACKS 358 4973
LIONS 358 1870
NAACP 358 1497
RED CROSS 358 0833
ROTARY 358 1194

ART CRAFT ANTIQUES DLRS 353 6981
CHAMBER OF COMMERCE 353 2221

THE NYACK VILLAGER 735-7639

INTERNET

SPIRALNET

914.348.7676

Electrolysis

AT LAST IN NYACK!

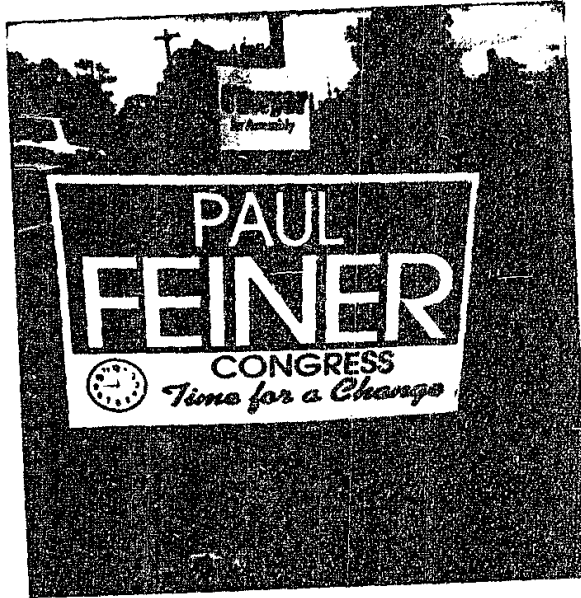
- Latest Flash Thermolysis
- disposable probes • complete privacy
- flexible hours • easy parking
- TV for children
- trained at New York Institute of Electrolysis

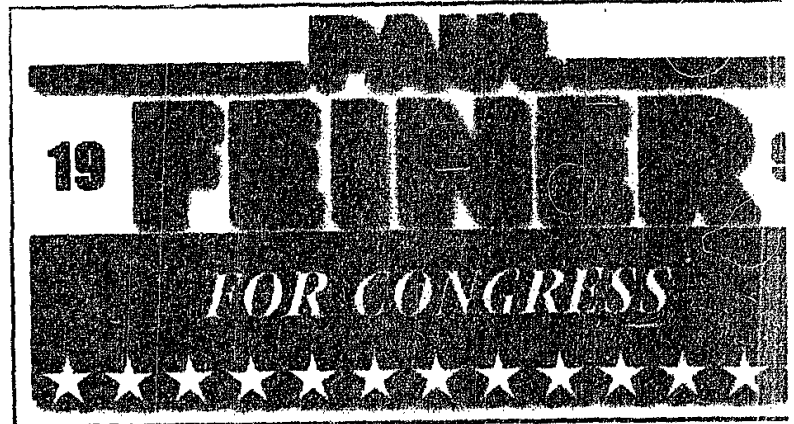
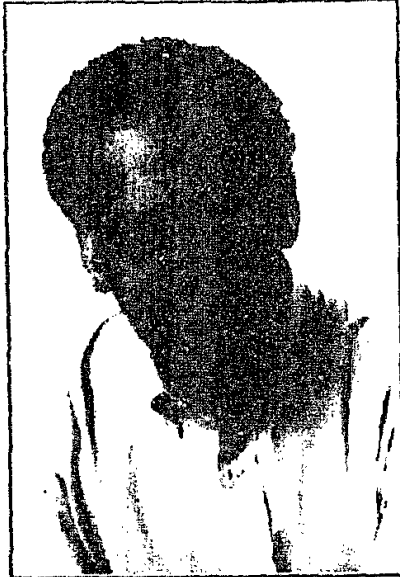
FOR MEN AND WOMEN

Call 358-4266

FOR FREE CONSULTATION

CONFIDENTIAL





OFFICIAL 1998 CAMPAIGN WEBSITE

*Democratic and Independence Party Candidate for US
New York's 20th District*

Updated Tuesday, November 3, 1998

E-mail us your comments on what issues Paul Feiner should be focusing on.



Volunteering & Contribution

If you want to make a contribution, send a check payable to
"Paul Feiner for Congress" to the address below.
We deeply appreciate any contribution you can make.

Feiner for Congress
P.O. Box 718
Hartsdale, NY 10530

Phone: (914) 472-4236
Fax: (914) 472-4273

You can make a real difference by volunteering your help.
Click on Paul Feiner's e-mail address below and send us a letter
saying you want to help. We look forward to hearing from you.

feiner98@feiner.org

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MODULE B

ITEMIZED DISBURSEMENTS

Use separate schedule(s)
for each category of the
Detailed Summary Page

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FOR LINE NUMBER 17

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

PAUL FEINER FOR CONGRESS C00332411

<p>A. Full Name, Mailing Address and ZIP Code</p> <p>THE NYACK VILLAGE P.O. BOX 82 NYACK, N.Y. 10960</p>	<p>Purpose of Disbursement</p> <p>ADVERTISEMENT</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p> <p>9/29/98</p>	<p>Amount of Each Disbursement This Period</p> <p>\$235.00</p>
<p>B. Full Name, Mailing Address and ZIP Code</p> <p>POSTMASTER-WHITE PLAINS 1,000 WESTCHESTER AVE. WHITE PLAINS, N.Y. 10610</p>	<p>Purpose of Disbursement</p> <p>POSTAGE</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p> <p>9/29/98</p>	<p>Amount of Each Disbursement This Period</p> <p>\$96.00</p>
<p>C. Full Name, Mailing Address and ZIP Code</p> <p>POSTMASTER-HARTSDALE 441 CENTRAL AVENUE HARTSDALE, N.Y. 10530</p>	<p>Purpose of Disbursement</p> <p>POSTAGE</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p> <p>9/29/98</p>	<p>Amount of Each Disbursement This Period</p> <p>\$52.00</p>
<p>D. Full Name, Mailing Address and ZIP Code</p> <p>PAUL FEINER 25 BOULDER RIDGE ROAD SCARSDALE, N.Y. 10583</p>	<p>Purpose of Disbursement</p> <p>(REIMBURSEMENT) 9/14/98 FUND RAISER EXPENSE</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p> <p>9/30/98</p>	<p>Amount of Each Disbursement This Period</p> <p>\$203.47</p>
<p>E. Full Name, Mailing Address and ZIP Code</p> <p>BELL ATLANTIC P.O. BOX 1100 ALBANY, N.Y. 12250</p>	<p>Purpose of Disbursement</p> <p>TELEPHONE</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p> <p>9/30/98</p>	<p>Amount of Each Disbursement This Period</p> <p>\$230.48</p>
<p>F. Full Name, Mailing Address and ZIP Code</p> <p>CATSKILL-DELAWARE PUBLICATIONS INC. P.O. BOX 308 CATSKILL, N.Y. 12723</p>	<p>Purpose of Disbursement</p> <p>SUBSCRIPTION</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p> <p>9/30/98</p>	<p>Amount of Each Disbursement This Period</p> <p>\$135.00</p>
<p>G. Full Name, Mailing Address and ZIP Code</p> <p>THE BANK OF NEW YORK 8 EAST PARKWAY SCARSDALE, N.Y. 10583</p>	<p>Purpose of Disbursement</p> <p>BANK CHARGES</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p> <p>9/30/98</p>	<p>Amount of Each Disbursement This Period</p> <p>\$17.34</p>
<p>H. Full Name, Mailing Address and ZIP Code</p> <p>NOVUS SERVICES P.O. BOX 28542 COLUMBUS, OHIO 43228-0542</p>	<p>Purpose of Disbursement</p> <p>VISA/MASTERCARD FEES</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p> <p>9/30/98</p>	<p>Amount of Each Disbursement This Period</p> <p>\$22.89</p>
<p>I. Full Name, Mailing Address and ZIP Code</p>	<p>Purpose of Disbursement</p> <p>Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year)</p>	<p>Amount of Each Disbursement This Period</p>

SUBTOTAL of Disbursements This Page (optional)

\$992.18

TOTAL This Period (last page this line number only)

\$10,387.12

Paul Feiner for Congress
Unitemized Printing Disbursements

April Quarterly (1/1/98 through 3/31/98)	\$71.00	\$185.00								\$256.00
April Q-1st amendment (1/1/98 through 3/31/98)	\$0.00									\$0.00
April Q-2nd amendment (1/1/98 through 3/31/98)	\$0.00									\$0.00
April Q-3rd amendment (1/1/98 through 3/31/98)	\$0.00									\$0.00
July Quarterly (4/1/98 through 6/30/98)	\$175.07	\$85.29	\$709.64	\$750.00	\$1,671.81	\$564.44	\$693.87	\$150.00	\$459.03	\$5,259.15
Pre-Primary (1/1/98 through 8/26/98)	\$4,425.00	\$128.00	\$42.70							\$4,295.70
October Quarterly (9/27/98 through 9/30/98)	\$82.20	\$526.27	\$692.81	\$277.55						\$1,578.83
Pro-General (10/1/98 through 10/15/98)	\$2,897.68									\$2,897.68
Post-General (10/15/98 through 11/23/98)	\$1,025.86	\$90.74	\$91.80	\$96.08	\$23.60					\$1,328.08
Year-End (11/24/98 through 12/31/98)	\$0.00									\$0.00
										\$15,915.44

ITEMIZED DISBURSEMENTS

Use separate schedule(s)
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FOR LINE NUMBER 17

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NAME OF COMMITTEE (in Full)

PAUL FEINER FOR CONGRESS C00332411

<p>A. Full Name, Mailing Address and ZIP Code PRONTO SERVICES P.O. BOX 314 50. FALLSBURG, N.Y. 12779</p>	<p>Purpose of Disbursement CONSULTING Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/3/98 7/8/98 7/14/98</p>	<p>Amount of Each Disbursement This Period \$500.00 500.00 500.00</p>
<p>B. Full Name, Mailing Address and ZIP Code SHEINKOFF, LTD. 379 WEST BROADWAY NEW YORK, N.Y. 10012</p>	<p>Purpose of Disbursement PRINTING Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/3/98</p>	<p>Amount of Each Disbursement This Period \$4,425.00</p>
<p>C. Full Name, Mailing Address and ZIP Code BELL ATLANTIC P.O. BOX 1100 ALBANY, N.Y. 12250</p>	<p>Purpose of Disbursement TELEPHONE Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/3/98</p>	<p>Amount of Each Disbursement This Period \$310.09</p>
<p>D. Full Name, Mailing Address and ZIP Code SCARSDALE-POSTMASTER CHASE ROAD SCARSDALE, N.Y. 10583</p>	<p>Purpose of Disbursement POSTAGE Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/3/98 7/10/98 7/10/98</p>	<p>Amount of Each Disbursement This Period \$128.00 104.53 332.00</p>
<p>E. Full Name, Mailing Address and ZIP Code WESTCHESTER COALITION FOR LEGAL ABORTION INC. 237 HAMBRONCK AVE. WHITE PLAINS, N.Y. 10605</p>	<p>Purpose of Disbursement DONOR LIST Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/8/98</p>	<p>Amount of Each Disbursement This Period \$215.00</p>
<p>F. Full Name, Mailing Address and ZIP Code MATTHEW S. BANNER 1 REYNOLD GROSSING SCARSDALE, N.Y. 10583</p>	<p>Purpose of Disbursement STAFF SALARY Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/10/98 7/10/98</p>	<p>Amount of Each Disbursement This Period \$261.95 248.43</p>
<p>G. Full Name, Mailing Address and ZIP Code PAUL FEINER (AMERICAN EXPRESS) 25 BOULDER RIDGE RD. SCARSDALE, N.Y. 10583</p>	<p>Purpose of Disbursement NETSCAPE, WEB Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/10/98</p>	<p>Amount of Each Disbursement This Period \$64.90</p>
<p>H. Full Name, Mailing Address and ZIP Code THE YALE CLUB OF N.Y.C. 50 VANDER BILT AVE. NEW YORK, N.Y. 10017</p>	<p>Purpose of Disbursement 6/14/98 FUND RAISER BANQUET Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/10/98</p>	<p>Amount of Each Disbursement This Period \$2,836.36</p>
<p>I. Full Name, Mailing Address and ZIP Code THE GM CARD P.O. BOX 88000 BALTIMORE, MD. 21288-3000</p>	<p>Purpose of Disbursement BRIDGE TOLLS, GAS Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)</p>	<p>Date (month, day, year) 7/10/98</p>	<p>Amount of Each Disbursement This Period \$103.95</p>

SUBTOTAL of Disbursements This Page (optional)

\$10,530.21